IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA
DENVER DIVISION

JOAN FOOTE,	)	
	)	
Plaintiff,	)	
	)	
v.	)	**CIVIL ACTION FILE**
	)	**NO.**
WHOLE FOODS MARKET, INC., WHOLE FOODS MARKET GROUP, INC., WHOLE FOODS MARKET SERVICES, INC., and WHOLE FOODS MARKET,	)	
	)	
Defendants.	)	

NOTICE OF REMOVAL

Pursuant to 28 U.S.C. §§ 1332, 1441, and 1446, Defendants Whole Foods Market, Inc., Whole Foods Market Group, Inc., Whole Foods Market Services, Inc., and Whole Foods Market (collectively referred to as the "Whole Foods Defendants" or "Defendants"), by and through its undersigned counsel, hereby remove the action commenced against them in the Court of Common Pleas of Philadelphia County, Pennsylvania to this United States District Court for the Eastern District of Pennsylvania. In support of this removal, Defendants show as follows:

1. On or about December 28, 2016, Joan Foote ("Plaintiff") filed a Complaint in the Court of Common Pleas of Philadelphia County, Pennsylvania. Said action was designated Case No. 161203125 (the "state court action"). The Complaint identifies Whole Foods Market, Inc., Whole Foods Market Group, Inc., Whole Foods Market Services, Inc., and Whole Foods Market as the Defendants.

2. In the Complaint for damages, Plaintiff, a New Jersey citizen, seeks to recover for injuries allegedly sustained as a result of Defendants' negligence in allowing a dangerous and defective condition to exist on the floor of a Whole Foods store located in South Carolina. The Complaint alleges that due to the Defendants' negligence, Plaintiff has suffered injuries including lumbar disc injuries, cervical strain and sprain, lumbar strain and sprain, and thoracic strain and sprain. The Complaint also asserts claims for pain and suffering, medical costs, loss of quality of life due to medically determinable physical and mental impairment, mental anguish and humiliation, and other financial expenses. *See* Plaintiff's Complaint at ¶¶ 9, 17-22, attached hereto as Exhibit "A."

3. Whole Foods Market, Inc. was purportedly served with the Summons and Complaint in this matter on or about February 1, 2017. Whole Foods Market Services, Inc. was purportedly served with the Summons and Complaint in this matter on or about January 30, 2017. Whole Foods Market Group, Inc. was

purportedly served with the Summons and Complaint in this matter on or about February 10, 2017. Finally, Whole Foods Market was purportedly served with the Summons and Complaint in this matter on or about January 27, 2017. Some of these methods of service were not proper, but regardless, this Notice of Removal is filed within thirty days of the earliest possible service date and, therefore, timely pursuant to 28 U.S.C. § 1446(b).

4. Pursuant to 28 U.S.C. § 1446(a), a copy of the Summons and Complaint that was delivered to Whole Foods Market, Inc., Whole Foods Market Services, Inc., Whole Foods Market Group, Inc., and Whole Foods Market is attached hereto as Exhibits "A", "B", "C", and "D" respectively. The documents which comprise Exhibits A, B, C, and D constitute all process, pleadings, and orders that have been received by the Whole Foods Defendants to date to its knowledge. The Whole Foods Defendants have not made an appearance in the state court action as of this date.

I. JURISDICTIONAL BASIS FOR REMOVAL

5. This Court has diversity jurisdiction over this action pursuant to 28 U.S.C. § 1332 and removal jurisdiction pursuant to 28 U.S.C. § 1441 because: (1) the requisite diversity of citizenship exists as Plaintiff is not a citizen of the same state as Defendants Whole Foods Market, Inc., Whole Foods Market Services, Inc.,

Whole Foods Market Group, Inc., and Whole Foods Market; and (2) the amount in controversy exceeds $75,000, exclusive of interest and costs.

DIVERSITY OF CITIZENSHIP

6. For purposes of diversity jurisdiction, "a corporation shall be deemed to be a citizen of any State by which it has been incorporated and of the State where it has its principal place of business." *Hertz Corp. v. Friend*, 130 S. Ct. 1181, 1185 (U.S. 2010) (citing 28 U.S.C. § 1332(c)(1)). The location of the principal place of business is determined by applying the "nerve center test," or by identifying the location where the corporation's high-level officers direct, control, and coordinate the corporation's activities. *Id.* Often the nerve center will be the corporate headquarters of a corporation. Not all of the Whole Foods Defendants are proper parties to this case; but for purposes of removal, all are diverse from the plaintiff in any event.

7. Whole Foods Market, Inc. is, and at the time of the filing of this action was, a corporation organized and existing under the laws of the State of Texas, with its principal place of business in the State of Texas.

8. Whole Foods Market Services, Inc. is, and at the time of the filing of this action was, a corporation organized and existing under the laws of the State of Texas, with its principal place of business in the State of Texas.

9. Whole Foods Market Group, Inc. is, and at the time of the filing of this action was, a corporation organized and existing under the laws of the State of Delaware, with its principal place of business in the State of Texas.

10. Whole Foods Market is a trade name, but to the extent it has citizenship, its citizenship would be that of its corporate entity noted above, which would make it a citizen of the State of Texas.

11. Paragraph 1 of the Complaint states that Plaintiff is a resident of Trenton, New Jersey. *See* Ex. A.

12. The requisite diversity of citizenship, therefore, is satisfied because Plaintiff is not a citizen of the same states as the Whole Foods Defendants.

THE AMOUNT IN CONTROVERSY HAS BEEN SATISFIED

13. The amount in controversy exceeds the sum of Seventy-five Thousand Dollars ($75,000), exclusive of interest and costs. Although Plaintiff's Complaint generically alleges that the amount in controversy is less than $75,000, the matter in controversy actually exceeds the minimum amount required for diversity jurisdiction. *See* 28 U.S.C. § 1332(a).

14. In the context of removal jurisdiction, remand is only appropriate when it appears "to a legal certainty that the plaintiff cannot recover the jurisdictional amount." *Frederico v. Home Depot*, 507 F.3d 188, 197 (3d

Cir.2007). However, a plaintiff's averment that his claims do not meet the amount in controversy, alone, is insufficient to warrant remand. *St. Paul Mercury Indem. Co. v. Red Cab Co.*, 303 U.S. 283, 294 (1938).

15. Here, Plaintiff claims that the Defendants' negligence caused (1) medically determinable physical and mental impairment, (2) economic losses, (3) mental anguish and humiliation, (4) impairment of the quality of life, and (5) loss of the ability to perform all or substantially all of Plaintiff's usual and customary activities prior to the accident. *See* Ex. A at ¶¶ 20, 22. Plaintiff also alleges that the Defendants caused Plaintiff (1) pain and suffering, (2) medical expenses, and (3) expenses for serious back injuries. Those injuries include injuries to her entire spinal cord: lumbar disc injuries, cervical strain and sprain, lumbar strain and sprain, and thoracic strain and sprain. *See* Ex. A at ¶¶ 18-19.

16. Because Plaintiff did not quantify the amount of the compensatory damages sought, remand is improper unless it appears to "a legal certainty that" Plaintiff cannot recover more than $75,000.00. In light of the fact that Plaintiff seeks damages against the Whole Foods Defendants arising from injuries to her entire spinal cord, physical and mental impairment, economic losses, mental anguish and humiliation, pain and suffering, impairment of the quality of life, and medical expenses for possible back surgeries, it cannot be shown "to a legal

certainty" that Plaintiff could not recover more than $75,000.00. Accordingly, the Whole Foods Defendants have a good-faith belief that the amount in controversy exceeds the jurisdictional amount.

17. Diversity of citizenship exists between all parties properly joined,[1] in that they are citizens of different states and the amount in controversy exceeds $75,000, exclusive of interest and costs. Therefore, this action is within the original jurisdiction of this Court pursuant to the provisions of 28 U.S.C. § 1332.

II. THE PROCEDURAL REQUIREMENTS FOR REMOVAL HAVE BEEN ESTABLISHED

18. As noted above, the Whole Foods Defendants were purportedly served between January 27 to February 10, and even though some of the methods of service were improper, this Notice of Removal is filed within thirty days of the earliest possible service date.

19. This Notice of Removal is timely filed under 28 U.S.C. § 1446(b)(1) because it is being filed within thirty (30) days of service upon the Whole Foods Defendants.

20. Contemporaneously with this filing, the Whole Foods Defendants will send written notice to Plaintiff and will file a Notice of Filing of Notice of

[1] In fact, some of the "Whole Foods Defendants" are improper, but they are all diverse from the Plaintiff, so there is no need to disregard any entities for removal purposes at this juncture.

Removal with the Clerk of the Court of Common Pleas of Philadelphia County, Pennsylvania pursuant to 28 U.S.C. § 1446. The Whole Foods Defendants have attached a copy of the Notice of Filing of Notice of Removal as Exhibit "E."

21. Philadelphia County, Pennsylvania is one of the counties comprising the Eastern District of the United States District Court of Pennsylvania. Since this action was originally filed in the Court of Common Pleas of Philadelphia County, Pennsylvania, venue is proper in the Eastern District of the United States District Court of Pennsylvania, in accordance with 28 U.S.C. § 1441(a).

22. This Court, therefore, has original jurisdiction over this action pursuant to 28 U.S.C. § 1332, inasmuch as there is complete diversity of citizenship among the parties, and the amount in controversy exceeds $75,000, exclusive of interest and costs.

WHEREFORE, Defendants Whole Foods Market, Inc., Whole Foods Market Group, Inc., Whole Foods Market Services, Inc., and Whole Foods Market respectfully remove this action from the Court of Common Pleas of Philadelphia County, Pennsylvania, to the Eastern District of the United States District Court of Pennsylvania based on the fact that original subject matter jurisdiction exists pursuant to 28 U.S.C. § 1332.

Respectfully submitted, this 17th day of February, 2017.

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Attorney for Defendants Whole Foods Market, Inc., Whole Foods Market Group, Inc., Whole Foods Market Services, Inc., and Whole Foods Market

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing **NOTICE OF REMOVAL** was on this date served via first class U.S. Mail, postage prepaid, upon the following:

Keith W. Kofsky, Esq.
Clearfield & Kofsky
One Penn Center at Suburban Station
1617 JFK Boulevard, Suite 355
Philadelphia, PA 19103
Attorney for Plaintiff

This the 17th day of February, 2017.

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